

HOUSE BILL 1672
By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 45,
Chapter 15, Part 1 and Title 45, Chapter 1, Part 1,
relative to title pledge lenders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-15-111, is amended in subsection
(a) by deleting the subsection in its entirety and by substituting instead the following language:

(a) A title pledge lender shall contract for and receive an effective rate of interest not to exceed three percent (3%) per month. Such rate shall include any and all fees the title pledge lender may charge, contract for, and receive to defray the ordinary costs of operating a title pledge office, including, but not limited to, investigating the title, appraising the titled personal property, insuring the personal property when in the physical possession of the title pledge lender, documenting and closing the title or property pledge transaction, making required reports to local law enforcement officials, for all other services provided by the title pledge lender, advertising, for losses on title pledge or property pledge transactions, salaries, and for all other expenses incurred by the title pledge lender except those in subsection (b). Such a fee shall be deemed interest for any purpose of law. Such interest shall be deemed to be earned, due and owing as of the date of the title pledge agreement or property pledge agreement and a like sum shall be deemed earned, due and owing on the same day of each subsequent thirty-day period.

SECTION 2. Tennessee Code Annotated, Section 45-15-103, is amended by adding the following language as new, appropriately designated items:

() "Commercially reasonable" has the same meaning as used in title 47, chapter 9. In addition, nonpublic sales or disposal of personal property between a title pledge lender and any business affiliates of a title pledge lender or a member of a title pledge lender's family are presumed not to be made in a commercially reasonable manner;

() "Commissioner" means the commissioner of the department of financial institutions;

() "Department" means the department of financial institutions;

SECTION 3. Tennessee Code Annotated, Section 45-15-107(a), is amended by deleting the language "county clerk in the county in which the person's title pledge office is to be operated for a license to conduct such a business" and substituting instead the language "department for a license to conduct such a business".

SECTION 4. Tennessee Code Annotated, Section 45-15-107(b)(5), is amended by deleting the language "to the county clerk to defray costs." and substituting instead the language "to the department to defray costs; and".

SECTION 5. Tennessee Code Annotated, Section 45-15-107(b), is amended by adding the following language as new subdivision (6):

(6) Other information as required by the department.

SECTION 6. Tennessee Code Annotated, Section 45-15-108(a), is amended by deleting the language "Every person" at the beginning of the subsection and substituting the following language:

Following verification by the department of the information contained in the petition, every person

SECTION 7. Tennessee Code Annotated, Section 45-15-108(a), is amended by deleting from the last sentence the following language:

but may be transferred from one location to another, or from one county to another, upon payment to the county clerk of any county involved in the transfer, a fee of fifty dollars (\$50.00).

and by substituting instead the language:

but, upon approval of the commissioner, may be transferred from one location to another upon payment to the department a fee of fifty dollars (\$50.00).

SECTION 8. Tennessee Code Annotated, Section 45-15-108(b), is amended by deleting the language “upon payment of the business tax.” and substituting the following language:

upon payment of an annual fee of fifty dollars (\$50.00) to the department and compliance with the provisions of this chapter.

SECTION 9. Tennessee Code Annotated, Section 45-15-109(c), is amended by deleting the following language:

This information shall be made available for inspection by the sheriff of the county and the chief of police of the municipality in which the title pledge lender is located during the regular business hours of the title pledge office.

and by substituting instead the following language:

This information shall be maintained at the title pledge office location, approved by the department, and made available for inspection by the law enforcement agencies where the title pledge lender is located, during the regular business hours of the title pledge office.

SECTION 10. Tennessee Code Annotated, Section 45-15-109, is further amended by adding the following new subsections (d)-(g):

(d)

(1) Every title pledge lender doing business under the laws of this state is subject to inspection by the commissioner or by an examiner appointed by the commissioner in accordance with § 45-1-116. A title pledge lender shall be examined at least once and not more than twice every twenty-four (24) months unless it appears from examination or from the report of the title pledge lender that it has failed to comply with laws or administrative regulations relating to title pledge lenders or has engaged in unsafe or unsound practices.

(2) The commissioner, each assistant commissioner, and each examiner may compel the appearance of any person for the purpose of the examination. The examination shall be made in the presence of one of the officers of the title pledge lender or the title pledge lender's designee.

(e) In undertaking the examination of any title pledge lender, neither the state, the commissioner, nor any examiner employed by the state is liable to any pledgor if the examination or an omission in the examination fails to fully and effectively disclose the financial condition of the title pledge lender.

(f)

(1) Reports of examination, and correspondence that relates to the report of examination, are considered confidential information. No officer or director of a title pledge lender or employee of the department shall release any information contained in the examination, except if:

(A) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality have been issued by a court of competent jurisdiction; or

(B) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings, to outside persons providing

professional services to the title pledge lender, or to outside persons for the purpose of evaluating the title pledge lender for acquisition. Reports of examination released to outside persons providing professional services to the title pledge lender or for the purpose of evaluating the title pledge lender for possible acquisition, shall require a written request from the outside person and prior approval by the board of directors or an executive committee of the title pledge lender.

(2) The department may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.

(3) Every official report concerning a title pledge lender, and every report of examination, shall be prima facie evidence of the facts stated therein for all purposes in any action in which the department or title pledge lender is a party.

(g) The department shall establish a fee to be collected by the department for any examination. The fee shall be sufficient to cover the cost of the examination based upon fair compensation for time and actual expense.

SECTION 11. Tennessee Code Annotated, Section 45-15-106(a)(1), is amended by deleting the language “at least seventy-five thousand dollars (\$75,000)” and substituting instead the language “at least one hundred thousand dollars (\$100,000)” and is further amended by deleting the language “office; and” and substituting instead the language “office;”

SECTION 12. Tennessee Code Annotated, Section 45-15-106(a), is amended by adding the following language as subdivision (a)(2) and redesignating current subdivision (a)(2) as (a)(3):

(2) File with the department a bond designating the department as beneficiary, in the amount of one hundred thousand dollars (\$100,000) per title pledge office, with a

surety company qualified to do business in this state. In lieu of the bond, the applicant may establish a certificate of deposit or an irrevocable letter of credit in a bank, as defined in § 47-4-105, designating the department as beneficiary in the amount of the bond. The bond, certificate of deposit, or letter of credit is for the use and benefit of any consumer who is injured pursuant to a property pledge or title pledge agreement by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this chapter by the title pledge lender. The title pledge lender's liability may be enforced either by proceeding in an administrative action or by filing a judicial suit at law in a court of competent jurisdiction. The bond, certificate of deposit, or letter of credit posted with the department is amenable to and enforceable only by and through administrative proceedings before the department and is not amenable or subject to any judgment or other legal process issuing out of or from a court in connection with such lawsuit. The bond, certificate of deposit, or letter of credit is payable on a pro rata basis as determined by the department, but the aggregate amount may not exceed the amount of the bond, certificate of deposit, or letter of credit; and

SECTION 13. Tennessee Code Annotated, Section 45-15-114, is amended by adding the following language as new, appropriately designated subsections:

() Following the expiration of the twenty (20) day holding period, the title pledge lender shall have a period of sixty (60) days in which to sell, in a commercially reasonable manner, the pledged property. At least ten (10) days prior to the sale, notice of the proposed sale shall be given to the pledgor and to any other secured party from whom the title pledge lender has received written notice prior to the notification sent to the pledgor, of a claim of interest in the pledged property. The proceeds of the commercially reasonable sale shall be applied to the principal, interest, and all fees owed by pledgor to the title pledge lender. Any surplus amounts shall be remitted to the

pledgor within thirty (30) days of the sale. The pledgor is entitled to reasonable attorney's fees and costs incurred in any successful action brought to recover all or part of such surplus amounts.

() At any time prior to the sale, the title pledge lender shall permit the pledgor to redeem the pledged property by tendering a money order or certified check for the principal amount of the property pledge or title pledge loan, interest accrued through the date the title pledge lender takes possession, and any reasonable expenses incurred to date by the title pledge lender in taking possession of, preparing for sale, and selling the pledged property. Nothing in this chapter nor in any property pledge or title pledge agreement shall preclude a pledgor from purchasing the titled personal property at any sale.

SECTION 14. Tennessee Code Annotated, Section 45-15-115, is amended by deleting subsection (2) in its entirety and by substituting instead the following language:

(2) Make any agreement requiring or allowing for the personal liability of a borrower or the waiver of any of the provisions of this chapter, or giving the title pledge lender any recourse against the pledgor other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default or failure to redeem, and to sell or otherwise dispose of the titled personal property in accordance with the provisions of this chapter;

SECTION 15. Tennessee Code Annotated, Section 45-15-117, is amended by adding the following language as new subsection (c):

(c)

(1) Notwithstanding any other law to the contrary, a violation of this chapter constitutes a violation of the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1.

(2) For the purpose of application of the Tennessee Consumer Protection Act, any violation of this chapter shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce and subject to the penalties and remedies as provided by such act.

SECTION 16. Tennessee Code Annotated, Section 45-1-104, is amended by deleting the language "or persons licensed under the Tennessee title Pledge Act of 1995, chapter 15 of this title." and by substituting instead the following language:

provided that the pawnbroker is not also a licensed title pledge lender and is not engaged in activities covered by the Tennessee Title Pledge Act of 1995, chapter 15 of this title.

SECTION 17. This act shall take effect July 1, 2005, the public welfare requiring it.